

Private foundation; scholarship grants; taxable expenditures. Scholarship grants made to individuals by a private foundation on the basis of academic standing, financial need, personal history, the cost of the programs of study to be pursued, and the likelihood that the recipients will be able to finance the balance of the cost of their education, are not taxable expenditures within the meaning of section 4945(d)(3) of the Code.

Advice has been requested whether grants to individuals made by a private foundation in the manner described below are taxable expenditures within the meaning of section 4945(d)(3) of the Internal Revenue Code of 1954.

The private foundation is a testamentary trust recognized as exempt from Federal income tax under section 501(c)(3) of the Code. It was created to provide college scholarship grants to students attending a high school in a certain locality within a city. The grants constitute scholarships which are excludable from the gross income of the recipients under section 117(a), and which are to be used for study at educational institutions described in section 151(e)(4).

A selection committee, made up of three high school principals and the director of the city's recreation center in that part of the city, selects the recipients based on information submitted on an application form and gained from personal interviews. Criteria used in selecting a recipient include academic standing, financial need, personal history, the cost of the program of study to be pursued by the applicant, and sources of income available to the applicant other than the trust's scholarship grant. The committee gives preference to those applicants who are likely to be able to finance the balance of the cost of their education.

Section 4945 of the Code imposes a tax on each taxable expenditure made by a private foundation.

Section 4945(d)(3) of the Code defines the term 'taxable expenditure' to include any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g) of the Code provides, in part, that grants to an individual for travel, study, or other similar purposes will not be considered as 'taxable expenditures' if they are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary or his delegate, and if it is demonstrated that the grant constitutes a scholarship which is subject to the provisions of section 117(a)

and is to be used for study at an educational institution described in section 151(e)(4).

Section 53.4945-4(b) of the Foundation Excise Tax Regulations provides, in part, that in order for a foundation to establish that its grants to individuals are made on an objective and nondiscriminatory basis, the grants must be awarded in accordance with a program which, if it were a substantial part of the foundation's activities, would be consistent with the existence of the foundation's exempt status under section 501(c)(3) of the Code and would require that the criteria used in selecting grant recipients from the potential grantees be related to the purpose of the grant.

A trust for educational purposes is charitable although the persons to be educated are not limited to the poor. The fact that recipients of scholarships are selected on the basis of scholastic ability without regard to financial need does not preclude exemption under section 501(c)(3) of the Code. See Rev. Rul. 69-257, 1969-1 C.B. 151.

The committee selects recipients on the basis of scholastic ability as well as other criteria which are related to the educational purposes of the trust. One such criterion is the cost of the program the applicant proposes to pursue, and whether the applicant is likely to be able to finance it with the foundation's assistance. By including such a factor in its consideration, the committee attempts to assure that the foundation's grants are likely to see the recipient through to the completion of an educational program.

By operating in the manner described above, the foundation has demonstrated that its scholarship grants are made on an objective and nondiscriminatory basis within the meaning of section 4945(g) of the Code. It has also demonstrated that its grants constitute scholarships which are subject to the provisions of section 117(a) and are to be used for study at an educational institution described in section 151(e)(4). Accordingly, the foundation's scholarship grants are not 'taxable expenditures' within the meaning of section 4945(d)(3).

Even though a private foundation considers its grant making program within the scope of this Revenue Ruling, it must request advance approval of its procedures in accordance with section 53.4945-4(d) of the regulations.